

STATEMENT OF PURPOSE

RS23458

Idaho Code section 63-3022H appears to create a distinction between a scenario where a partnership distributes a piece of property to a partner who continues to be a partner versus a scenario where a partnership distributes property to a partner who is cutting ties and leaving the partnership. To qualify for the capital gain deduction under Idaho Code section 63-3022H, an individual must hold real property for 12 months. Section 63-3022H currently allows a partner who receives property (but continues to be partner in the partnership) to "tack on" (i.e., include) the amount of time that the partnership held the property to determine whether he has satisfied the 12 month holding requirement. For example, if a partnership owned a piece of real property for 11 months, then distributes the property to one of its partners (who still remains a partner after the distribution) and then one month after the distribution the partner sells the property, the partner gets to "tack on" the 11 months with his 1 month holding period to determine if he satisfies the requirement of holding the property for 12 months. On the other hand, section 63-3022H as interpreted by the Idaho State Tax Commission does not allow this "tacking on" of a holding period for a partner who receives a distribution of property in a liquidating distribution (i.e., the partner decides to no longer be involved in the partnership, so he receives a distribution of real property as a final cash out of his partnership interest and walks away). In the liquidating scenario, if the partner sells his real property one month after the distribution, no additional holding period "tacks on", and it is treated as if he has only held the property one month and he does not qualify for the Idaho capital gains deduction. This bill removes any distinction between distributions to an on-going partner versus liquidating distributions to partners leaving a partnership. In either case the individual would be allowed to "tack on" the time for which the partnership held the property for purposes of satisfying the 12 month holding period requirement in section 63-3022H(3)(a).

FISCAL NOTE

This bill will have little or no fiscal impact. Knowledgeable taxpayers can plan around the trap, sometimes with tax-deductible costs. Further, few, if any, violations of the existing Idaho method are self-reported and are only found through audit.

Contact:

Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.
(208) 336-9880